

III. Remarks

To highlight the distinction of the above referenced invention over the prior art as interpreted by the Examiner in the Office Action of September 3, 2008, Paper No. 20080831, the specification and claims were amended as set forth herein. Claims 1, 3-7, 10, 11, and 13, 14 were amended to more clearly define the subject matter of the invention and to place all of the claims remaining in the application in condition for allowance. New dependent Claim 15 was added.

The specification was amended herein to correct matters of a grammatical and typographical nature. No new matter was presented and such amendments are deemed unobjectionable. Entry thereof is respectfully requested.

In the Office Action, the Examiner rejected Claims 1-14 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. The claims were considered vague by the Examiner for the following reasons:

- (a) The claims are considered vague and indefinite because of the phrase “preferably”, being included in some of the claims.
- (b) Claim 1 recites the limitation “the container lip” and “said cant members” in lines 3 and 7, respectively. According to the Examiner, there is no antecedent basis for these limitation in the claims.
- (c) The language and wording of Claim 6 is considered to be confusing by the Examiner, and

(d) The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

In response to the 35 U.S.C. § 112 rejection, the phrase “preferably” has been deleted from any of the claims as amended. With regard to Claim 1, the objected to language of the container lip has been positively recited and with regard to the objected to language “said cant members”, in line 7, the undersigned is unable to find this language and accordingly, has amended the claim to ensure that this language is no longer in the claim. Claim 6 has been amended to particularly point out and distinctly claim the subject matter which Applicants regard as the invention while some of the dependent claims have also been amended to avoid any deficiencies pointed out by the Examiner.

In view of the claims as amended herein, it is respectfully suggested that each of the 35 U.S.C. § 112 rejections set forth by the Examiner has now been corrected and that the amended claims do indeed particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Accordingly, withdrawal of the 35 U.S.C. § 112 rejection is respectfully submitted.

In the above referenced Office Action, the Examiner rejected Claims 1-4, 6-11, 13, and 14 under 35 U.S.C. §102(b) as being anticipated by the disclosure of Von Holdt, U.S. Patent No. 5,979,691. The undersigned attorney respectfully traverses the Examiner’s rejection of independent Claim 1 and dependent Claims 2-4, 6-11, 13, and 14 in view of the amendments presented herein and submitted herewith as well as the following argument.

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. §102 is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents, functioning in substantially the same way to produce substantially the same results. As most recently noted by the Court of Appeals of the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick*, 221 USPQ 481, 485 (1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. §102, the Court stated:

“Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.”

Applicant's amended independent Claim1 now requires:

1. A container, in particular a plastic container, preferably in the form of a pail, having a lid for closing the container, **said lid having a receiving area in which**, when said container is in the closed state, a **container lip limiting the container opening engages and is held**, **said receiving area having at least two latch-detent hook members**, one of said at least two latch-detent hook members being configured such that said one of said at least two latch-detent hook members is released by way of a **first predetermined movement in a first direction**, the other of said at least two latch-detent hook members being configured such that said other of said at least two latch-detent hook members is released by way of a **second predetermined movement in a direction opposed to said first direction**, whereby in order to release said at least two latch-detent hook members, **said first and second predetermined movements must be in opposed directions**; said one of said at least two latch-detent hook members further being configured such that when said container is in the closed state, said sealing surfaces are pressed together reliably to form seals.

Von Holdt, U.S. Patent No. 5,979,691, does not disclose a lid having a receiving area in which a container lip engages and is held wherein at least two latch-detent hook members are configured within the receiving area such that one of the latch detent hook members is released by way of a first predetermined movement in a first direction while the other of the at least two latch-detent hook members is released by way of a second predetermined movement in a direction opposed to the first direction so that in order to release the at least two latch-detent hook members located within the receiving area, the first and second predetermined movement must be in opposed directions.

In Von Holdt, there is only one hook member within the receiving area of the lid while the second hook member in the form of a strip 24 is located below the receiving area of the lip and has a hook 26 which engages an extension of the body of the container.

Therefore, in applying the test for anticipation as set forth in *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick*, supra, Von Holdt does not anticipate independent Claim 1 as amended. Further, by way of the principle of dependency, Von Holdt cannot anticipate dependent Claims 2-4, 6-11, 13, and 14 since these claims depend from amended independent Claim 1 and contain the elements of the independent Claim 1 from which they depend.

The Examiner rejected dependent Claims 5 and 12 under 35 U.S.C. § 103 as being unpatentable over the teachings of Von Holdt, U.S. Patent No. 5,979,691 in view of the teachings of Wagli, European Publication No. CH 672,473. Applicant's attorney respectfully traverses the 35 U.S.C. §103 rejections set forth herein in view of the claims as amended and for the reason that Applicant's invention is not an obvious improvement over the prior art.

With respect to the rejections under 35 U.S.C. §103, it is noted in MPEP § 706 that the standard of patentability to be followed in the examination of a patent application is that which was enunciated by the Supreme Court in *Graham v. John Deere*, 148 USPQ 459 (1966), where the Court stated:

“Under Section 103, the scope and the content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.”

Accordingly, to establish a *prima facie* case of obviousness, the Patent Office must: (1) set forth the differences in the claim over the applied references; (2) set forth the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and (3) explain why the proposed modifications would be obvious. To satisfy step (3) above, the Patent Office must identify where the prior art provides a motivating suggestion, inference or implication to make the modifications proposed in step (2) above. *In re Jones*, 21 USPQ2d 1941(Fed. Cir. 1992).

The mere fact that the prior art may be modified by the Examiner does not make the modification obvious unless the prior art suggests the desirability for the modification. *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992). In the present case, the Examiner has failed to make a proper *prima facie* showing of obviousness since the Examiner has failed to show how the prior art suggests the desirability of the proposed modification.

Von Holdt, U.S. Patent No. 5,979,691, is directed to difficulties associated with the sealing of square containers due to the O-rings likeliness of developing leaks at corners of the square containers, when containers are tested using a drop test.

Von Holdt teaches a container lid provided for square containers having greatly improved resistance to lid pop-off, and are not effectively separable without the destruction of certain parts of the locking system as well as to provide a tamper proof indication that the closed system has been opened. Accordingly, Von Holdt proposes a two-piece connectable article comprising a first piece such as a container and a second piece such as a lid for such container which fit together in a connected position. The container has a plurality of integral, extending strip members 24 having free ends that each define a latch member 26. The container has an offset facing peripheral wall that defines a plurality of apertures 32 positioned to receive the latch member 26 of the extending strip member 24 in the connected position. The apertures 32 are sized to cause inward flexing of the latch member 26 as the latch members 26 are placed through the apertures 32, so as to assume the connected position. To open the container, some or all of the extending strip members 24 may be severed. Then, optionally, a second snap latch sealing system 20, 22 maybe provided permitting repeated common nondestructive connection and separation of the container and the lid member. Such a snap latch system may comprise a known plastic sealing closure system for a bucket lid of a snap seal type, such that the container can be resealed after opening.

Wagli, Publication No. CH 672,473, is directed to the closure of a plastic container having a lid with a portion that engages the top of the container. The lid has a U-section, including a sealing ring, and has circumferential grooves with reinforcing ribs, the lid having an inner rib which engages the circumferential grooves. The outer surface of the lip portion is tapered down towards its top in order to provide a container which enables the container with 30 kilogram filling to drop from a height of 1.2 meters at an angle of 45 degrees onto its closure

without fracture. Note that Wagli requires an outward movement in only one direction in order to disengage the latch-detent members of the lip resulting in the removal of the lid from the container. Accordingly Wagli completely fails to teach the required movement in opposed directions as set forth in amended independent Claim 1 in order to remove the lid from the container.

The difference between Applicant's invention and the prior art references cited by the Examiner in the rejection under 35 U.S.C. §103 are quite clear. The solutions taught by each of the references, as well as Applicant's invention are directed to problems associated with testing of maintaining container lids on containers to ensure that the sealing elements withstand severe drop tests. Von Holdt teaches the use of an extended integrally molded strip 24 which contains a latch member 26 that interacts with an aperture 32 in a circumferential flange attached to the container so that the latch member 26 can be inserted into the aperture 32 to maintain the lid onto a square container. Further, Von Holdt teaches the destruction of these integral member strips 24 in order to open the container so as to provide a tamper proof indication that the closed system has been opened. The teachings of Wagli combined with the teachings of Von Holdt could not possibly result in Applicant's invention in that the structure of Wagli would have to be redesigned in order to allow the addition of integral strip members 24 with appropriate latch members 26 to be incorporated into the lid of Wagli while then further Wagli would need to be redesigned with apertures in the polygonal flange 9 wherein the latch members 26 of Von Holdt could be inserted to lock the lid to the container. Even if such restructuring were possible as suggested by the Examiner, it is clear from the teachings set forth in both Von Holdt as well as Wagli that the suggested combination would not result in Applicant's invention simply because

the use of integral strip members 24 as taught by Von Holdt would not be a latch member within the receiving area of the lid as set forth in the claims, as amended. Note that Applicant's invention, at pages 9 and 10 of the substitute specification defines a receiving area 4 at the periphery of the lid in the form of an inverted U-shape with an open area at the bottom so as to accommodate therein the various structure elements of the open end of the lip of the container. Accordingly, as clearly set forth in the claim, the latch-detent combinations claimed must be within the receiving area 4 of the lid in order to provide the features of the invention. Clearly, even if Wagli was restructured to incorporate the integral strip members 24 of Von Holdt, such latch-detent combination would not be within the receiving area of the lid as required by amended independent Claim 1. Accordingly, any attempt to combine the teachings of the reference of Von Holdt or Wagli with the elements of Wagli would require additional structure and the resulting structure could possibly be incompatible with itself in view of the teachings of each of the references and may in fact be technologically incorrect in view of the objectives set forth in the Applicant's invention. The resulting structure would be more cumbersome, require a significant amount of more space, as well as not have the latch-detent combinations required within the receiving area of the lid as clearly set forth in Applicant's claims.

Even if as the Examiner suggests the teachings are combined, one skilled in the art would have no basis for making such a combination of the teaching of Von Holdt and Wagli since the combination of the suggested elements of each of these references is not specifically directed to solving the problem solved by Applicant's invention nor would it result in an apparatus that provides the features of Applicant's invention. It is respectfully suggested that, but for the disclosure made by the Applicant in the application, there is no suggestion whatsoever to

combine the teachings of Von Holdt or Wagli in order to obviate Applicant's invention as taught by the claims presently pending in the application. Thus, it is only through Applicant's teachings and disclosure that one of ordinary skill in the art would appreciate the need for a lid and container wherein the latch-detent members are within the receiving area of the lid and require movements in opposing directions in order to release the lid from the containers. Clearly, the claims are amended herein, require such structure to be within the receiving area of the lid so as to provide a safe closing of a lid and container under extreme conditions, sufficiently leak proof to prevent any escape of the transported hazardous substances within the container. Further, such closure would withstand drop tests because forces in opposing directions are required in order to remove or release the two latch-detent hooks contained within the receiving area of the lid from the container. In view of this, a person of ordinary skill in the art would not seek to combine these references cited by the Examiner to produce the results that Applicant's invention as now claimed teaches.

It is well settled patent law that the mere fact that a disclosure can somehow be combined with other references does not make that combination obvious unless the prior art contains some suggestion of the desirability for combining the prior art reference. Here, the prior art contains absolutely no suggestion whatsoever for combining the references as set forth in the Examiner's rejection to teach the invention as claimed according to Applicant's disclosure. Therefore, it is respectfully suggested that the Examiner is using hindsight reconstruction in an attempt to obviate Applicant's invention after having the benefit of reading Applicant's application. Accordingly, Applicant's invention is an unobvious improvement over the prior art and not an obvious modification of any of the references cited by the Examiner.

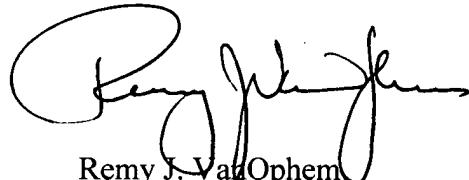
In view of the foregoing remarks, the undersigned attorney respectfully submits that the amended independent claims as well as the dependent claims are clearly in condition for allowance. Therefore, Applicant's attorney respectfully requests that the Examiner's rejections under 35 U.S.C. §103 be withdrawn from the claims as amended herein and that a formal Notice of Allowance be issued therefor.

The Commissioner is hereby authorized to charge any deficiency in fee associated with this amendment to the undersigned's Deposit Account No. 22-0212. A duplicate of this page is included.

If the Examiner has any questions with respect to any matter now of record, Applicant's attorney may be reached at (586) 739-7445.

Respectfully submitted,

VANOPHEM & VANOPHEM, P.C.



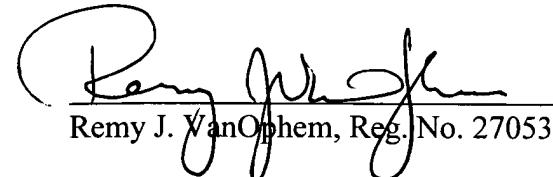
Remy J. VanOphem
Attorney for Applicant
Registration No. 27053

51543 Van Dyke Avenue
Shelby Township, MI 48316-4447
(586) 739-7445
Attorney Docket No. BHB168A US
RVO/ndt

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Remy J. VanOphem, Reg. No. 27053

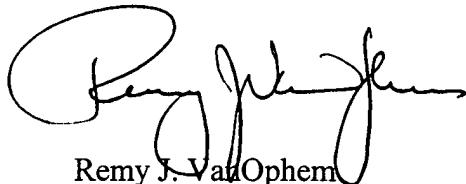
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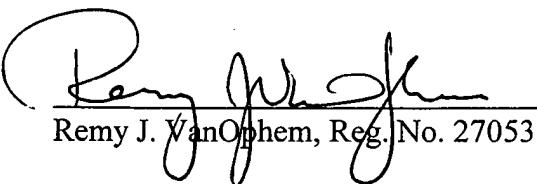
Remy J. VanOphem
Attorney for Applicant
Registration No. 27053

51543 Van Dyke Avenue
Shelby Township, MI 48316-4447
(586) 739-7445
Attorney Docket No. BHB168A US
RVO/ndt

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